

National Aeronautics and Space Administration

Headquarters
Washington, DC 20546-001



December 11, 2018

Reply to Attn of:

Office of the General Counsel

Robert Delaware
MuckRock News
DEPT MR 58741
411A Highland Avenue
Somerville, MA 02144-2516
58741-27423139@requests.muckrock.com

Re: FOIA-AFRC-F-00781

Dear Mr. Delaware:

By letter dated October 15, 2018, and received on October 24, 2018, you appealed the estimate of costs provided by the NASA FOIA Office in the above-captioned matter. This letter is NASA's final determination of your appeal.

BACKGROUND

On July 28, 2018, you submitted a request essentially seeking "any Uber-related documents or communications sent or received by Davis Hackenberg." After communication with the HQ FOIA Office, on August 30, 2018, your request was subsequently refined as follows:

All emails sent to (including cc and bcc fields) or from the email address of NASA engineer Davis Hackenberg which contain the following words or phrases in the subject line: "UAM" "Urban Air Mobility" "Uber" "UberElevate" "UberAir" "Jeff Holden" "Dara Khosrowshahi" "Travis Kalanick" "Mark Moore" "Holden" "Khosroshai" and "Kalanick." Please limit the request to emails sent between August 31 2017 and August 31 2018.

A search was conducted for the requested documents. Because you were placed in the "all other" requester category (i.e., you did not qualify for the commercial, education/scientific, or the news media categories) in accordance with 14 C.F.R. § 1206.507, you were advised that you would need to agree to be responsible for an estimated cost of \$721.64 for NASA to proceed on your request.

You submitted your appeal stating two grounds: (1) the fees charged are "too high," and (2) you believe that you should not be placed in the "all other" requester category.

DETERMINATION ON APPEAL

Your appeal has been reviewed and processed pursuant to applicable statutes, including the FOIA, 5 U.S.C. § 552 and NASA's FOIA regulations, 14 CFR Part 1206. The process involved an examination of your original request, all related correspondence, the initial determination, and your appeal. The NASA FOIA Office's determination as to both fees and the placement of your request in the "all other" requester category.

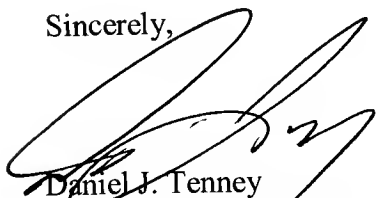
DISCUSSION

With regard to the fees, you base your appeal on the fact that Twitter users advised that the proposed fee is "too high." The initial determination clearly sets out the basis for the proposed fees. In your appeal, you do not specifically challenge any aspect of the estimate. After reviewing, I have determined that the estimate is reasonable given the results of the search and the nature of the records requested.

With regard to placing your request in the "all other" fee category, you argue in your appeal that you "consider [your]self an amateur historian" and that numerous of your FOIA requests have been deemed news worthy by media outlets. I assume, therefore, you are requesting reassignment into the "news media" category. The criteria for assigning a request to the news media category is set forth at 14 C.F.R. § 1206.507(3). Your appeal does not demonstrate any of the required criteria for the "news media" category. Therefore, the assignment of your request to the "all other" category is appropriate.

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 301-837-1996; toll free at 1-877-684-6448; or facsimile at 301-837-0348.

Sincerely,



Daniel J. Tenney
Associate Administrator
Mission Support Directorate
Attachment

Freedom of Information Act, Section 552(a)(4), as amended

(I)

If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II)

for any request described in clause (II) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v)

No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi)

Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii)

In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(viii)

An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request.

(B)

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C)

Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D)]

Repealed. Pub. L. 98-620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E)

(i)

The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either—

Freedom of Information Act, Section 552(a)(4), as amended

(I)

a judicial order, or an enforceable written agreement or consent decree; or

(II)

a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)

(I)

Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall—

(I)

notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II)

annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii)

The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(G)

In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.